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In re Application of
Vedsted et al
Application No.: 10/598,721
PCT No.: PCT/DK2005/00129
Int. Filing Date: 25 February 2005
Priority Date: 08 March 2004
Attorney's Docket No.: GMU-0007
For: METHODS AND DEVICES FOR
DETERMINING BRAIN STATE

COMMUNICATION

This application is before the PCT Legal Administrative Office for consideration of matters under 35 U.S.C. 371.

DISCUSSION

On 25 February 2005, applicants filed international application No. PCT/DK2005/00129 claiming a priority date of 08 March 2004. Accordingly, the deadline for entry into the national stage by paying the basic national fee in the U.S. expired as of midnight of 08 September 2006.

On 08 September 2006 applicants filed in the United States Patent and Trademark Office (PTO) a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee. However, a defective executed declaration accompanied the international application.

For the reason below, the application may not enter into national stage processing at this time.

The composite declaration filed on 08 September 2006 is defective because it does not comply with 37 CFR 1.497(a)(3). A Declaration, under 37 CFR 1.497(a)(3), must identify each inventor. See MPEP § 602. In this instance, applicants submitted a composite declaration comprising of two sets of declarations, which none is complete because each set must be complete by having the correct number of pages and listing all the inventors.

Copies of the same page is not part of a set of a proper declaration because it is considered a composite declaration and each set must be a complete declaration with the proper statement and the names of each inventor even though each set of declarations may not have all the signatures of the inventors. Therefore, a proper declaration must consist of individual complete sets of declaration that taken as a whole would have all the required signatures of the inventors as required under 37 CFR 1.497(a)(3).

In addition, the second declaration, which only lists one inventor, does not have the signature of Kjeld Holmstrup. If Kjeld Holmstrup refuses or can not be reached for his signature, then applicants will have to file a petition under 1.47(a) in order to enter national stage.

Note section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Applicant is required to provide an oath or declaration in compliance with 37 CFR 1.497(a)-(b) within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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